

## RENEW & AMEND



**U.S. Department of  
Transportation**  
Office of the Secretary  
of Transportation

## NOTICE OF ACTION TAKEN

**December 29, 1997**

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*This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.*

Joint Application of **United Air Lines, Inc. and Lufthansa German Airlines** filed **1/21/97** in Docket **OST-95-369** for:

**XX** Renew exemption from 49 U.S.C. section 41301 to permit Lufthansa to (a) engage in scheduled foreign air transportation of persons, property, and mail between points in Germany and points in the United States (*i.e.*, third/fourth freedom services) pursuant to a code-sharing arrangement with United on flights between Lufthansa's authorized U.S. gateways and points in the United States and (b) to integrate its services to Washington, DC with its other authorized U.S. gateways so that all of its authorized U.S. gateways may be served on a coterminal basis.

**XX** Renew statement of Authorization for United under 14 CFR Part 207 to engage in code-sharing operations with Lufthansa authorized in the above paragraph.

**XX** Renew statement of Authorization for United and Lufthansa under Part 207 and 212, respectively, to engage in code-sharing operations between any U.S. gateway Lufthansa is authorized to serve and any point in Germany (nonstop or over intermediate points on a blind-sector basis only).

**XX** Amend statement of Authorization for Lufthansa under Part 212 to permit it to engage in code-share operations with United on flights that Lufthansa operates as follows: (a) between any two points in Germany, on a blind sector basis;<sup>1</sup> (b) between a point or points in Germany, on the one hand, and the following third-country points on a blind-sector basis (*i.e.*, without local traffic rights):<sup>2</sup> Vienna, Austria; Prague, Czech Republic; Copenhagen, Denmark; Cairo, Egypt; Helsinki, Finland; Lyon and Nice, France; Athens, Greece; Budapest, Hungary; Bombay and Delhi, India;<sup>3</sup> Nairobi, Kenya; Kuwait; Warsaw, Poland; Moscow, Russia; Jeddah and Riyadh, Saudi Arabia; Stockholm, Sweden; Geneva, Switzerland; and Istanbul, Turkey; (c) between London, England, on the one hand, and Berlin, Hamburg and Munich, Federal Republic of Germany, on the other.

(See Reverse Side)

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<sup>1</sup> Lufthansa's current statement of authorization permits it to engage in code-share operations with United on flights that Lufthansa operates between Frankfurt and other named German points. The amendment it has requested would enable Lufthansa to engage in code-share operations with United between any two points in Germany.

<sup>2</sup> Lufthansa's current statement of authorization permits to it engage in code-share operations with United on flights that Lufthansa operates beyond Germany from Frankfurt. The amendment it has requested would also enable Lufthansa to engage in such beyond-Germany code-share operations with United from German points other than Frankfurt.

<sup>3</sup> By Order 97-2-26, the statement of authorization was amended to include Madras, India. That authority expires March 3, 1999. For administrative efficiency we have extended the Madras authority coextensive with the statement of authorization renewal granted by this Notice.

**XX** Amend exemption from 49 U.S.C. section 41101 to the extent necessary to permit United to engage in scheduled foreign air transportation of persons, property, and mail between (a) points in the United States and Lyon, France, and (b) points in the United States and Nairobi, Kenya, via any point or points in Germany, under its code-sharing arrangement with Lufthansa.

**XX** Renew statement of Authorization under Part 207 to permit United to engage in code-sharing operations on a blind-sector basis with Lufthansa on flights operated by United between Lufthansa's U.S. gateways, on the one hand, and Guatemala City, Guatemala; San Salvador, El Salvador; San Jose, Costa Rica; and Panama City, Panama, on the other.

**XX** Renew exemption from section 41301 to the extent necessary to permit Lufthansa to engage in scheduled foreign air transportation of persons, property and mail beyond its authorized Washington, DC gateway, on the one hand, and Guatemala City, Guatemala; San Salvador, El Salvador; San Jose, Costa Rica; and Panama City, Panama City, on the other, under its code-sharing arrangement with United.

Applicant reps: **Joel Burton (202) 637-9130 (United)** DOT Analyst: **Sylvia Moore (202) 366-6519**  
**J. Edward Cox (202) 663-6000 (Lufthansa)**

#### DISPOSITION

**XX** *Granted (Subject to conditions, see below)*

*The above action was effective when taken:* **December 29, 1997, through December 29, 1999**

**XX** *Under assigned authority (14 CFR 385) by:* **Paul L. Gretch, Director**  
**Office of International Aviation**  
**(Petitions for review may be filed from now**  
**until 10 days after the confirming order/letter**  
**issues. Filing of a petition shall not stay the**  
**effectiveness of this action.)**

**XX** **Authority granted is consistent with the aviation agreement between the United States and the Federal Republic of Germany.**

*Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:*

**XX** **Holder's certificate of public convenience and necessity (United)**

**XX** **Holder's foreign air carrier permit (Lufthansa)**

**Conditions:** The code-sharing operations authorized herein must comply with 14 CFR 399.88 of the Department's regulations and any amendments to the Department's regulations concerning code-share arrangements that may be adopted, and are expressly conditioned upon the requirements that the foreign air transportation be sold in the name of the carrier holding out the service in computer reservations systems and elsewhere, that the carrier selling such transportation accept all obligations established in the contract of carriage with the passenger (*i.e.* the ticket), and that the operator shall not permit the code of its U.S. code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose air space the Federal Aviation Administration has issued a flight prohibition.

The authority granted is also subject to the limitations and conditions governing antitrust immunity in Order 96-5-27.

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**Remarks:** The authority for which United and Lufthansa requested renewal expired March 22, 1997, but had been kept in force pursuant to the provisions of the Administrative Procedure Act, 5 U.S.C. 558(c), as implemented by 14 CFR Part 377, pending action on the carriers' timely filed renewal application.

**Answers:** American filed an answer stating that it did not oppose United's application for renewal but opposed any amendment to enhance that authority until approval of the American/British Airways alliance, pending in Docket OST-97-2058. United filed a reply, stating that its proposed amendment is fully consistent with the U.S.-Germany open skies agreement, and that there is no legal or logical connection between the requested code-share amendment and the approval sought by American and British Airways.

We were not prepared to defer or deny the United and Lufthansa joint application to amend their code-share authority. The authority requested is consistent with the open-skies aviation agreement between the United States and the Federal Republic of Germany. American presented no public interest arguments that warranted withholding approval of the bilaterally provided for authorities requested. We, therefore, found that approval of the requested authorities is in the public interest.